

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 A-01 DRC-01 /018 W
-----068880 171658Z /46

R 171628Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0722

C O N F I D E N T I A L SECTION 01 OF 02 BONN 13441

STADIS//////////

DEPARTMENT FOR L/M HUMMER, L/EUR GANTZ

E. O. 11652: GDS
TAGS: AFSP, AINF, GW
SUBJECT: IRS INQUIRY - BERLIN OCCUPATION COST
EMPLOYEES

REF: STATE 153955

1. REFTEL SUGGESTED IRS COULD BE SUPPLIED NAMES AND
BASIC SALARY OF INDIVIDUALS PAID FROM THE OCCUPATION
COST BUDGET, WITH REQUEST THAT IRS FIRST ATTEMPT TO
COLLECT OTHER DATA, E.G. SOCIAL SECURITY NUMBERS,
DIRECTLY FROM THE AFFECTED INDIVIDUALS BEFORE
APPROACHING THE MISSION FOR MORE INFORMATION.

2. IT IS IRS ATTACHE SPENCER'S POSITION THAT OCCUPATION
COST BUDGET EMPLOYEES ARE EMPLOYEES OF THE U.S. GOVERN-
MENT, AND THAT THE EMBASSY (I.E. STATE), ON THE BEHALF
OF THE AMBASSADOR AS CHIEF OF MISSION BERLIN AND SUPREME
AUTHORITY IN THE AMERICAN SECTOR BERLIN, IS LIABLE AS
THE GOVERNMENT "EMPLOYER" FOR ALL CURRENT AND PAST
INCOME AND EMPLOYMENT TAX WITHHOLDINGS, NOT BEYOND THE
APPLICABLE STATUTE OF LIMITATIONS. THERE WAS QUESTION
OF WHETHER STATUTE OF LIMITATIONS WOULD BE APPLICABLE IN
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THIS CASE. CONSEQUENTLY, IRS ATTACHE REQUESTS: BEGIN
QUOTE - THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF
ALL PERSONS PERFORMING SERVICES FOR THE AMERICAN
EMBASSY OR UNITED STATES MISSION, BERLIN WHO WERE PAID
FROM OCCUPATION FUNDS FOR ANY PERIOD AFTER 1 JANUARY
1974 THROUGH 31 JULY 1977, COPIES OF CONTRACTS WITH SUCH
EMPLOYEES OR "CONTRACTORS", AND THE AMOUNTS PAID THERETO

FOR EACH QUARTERLY PERIOD STARTING 1 JANUARY 1974. END
QUOTE. IDENTICAL INFORMATION IS BEING REQUESTED OF DOD
ELEMENTS IN WEST BERLIN.

3. EMBASSY BONN HAS EXPLAINED, WITHOUT SUCCESS, TO IRS
REPRESENTATIVE THAT SOME OCCUPATION COST EMPLOYEES ARE
EMPLOYEES OF THE ALLIED KOMMANDATURA, A SUPRANATIONAL
BODY. RELEASE OF RECORDS, DATA, ETC. OF THEIR EMPLOY-
MENT COULD BE OBJECTIONABLE TO OUR ALLIES. THE POSI-
TIONS AND EMPLOYEES IN QUESTION ARE NOT SUBJECT TO U.S.
GOVERNMENT EMPLOYMENT CEILINGS, EMPLOYEES HAVE NO
FEDERAL STATUS, ARE NOT FUNDED BY U.S. GOVERNMENT
APPROPRIATED OR NON-APPROPRIATED FUNDS, AND WAGES ARE
NOT PAYROLLED BY A U. S. GOVERNMENTAL INSTRUMENTALITY.
RATHER, PAYROLL AND PAYMENT IN DMS IS EFFECTED BY THE
BERLIN COST OFFICE (LOOCB) AND CHARGED TO THE OCCUPATION
COST BUDGET. WE HAVE POINTED OUT THAT FOR THESE REASONS,
EMPLOYMENT IN OCCUPATION COST, MULTILATERAL POSITIONS,
WAS EXEMPTED FROM SECTION 1415 OF THE ACT OF JULY 15, 19
1952, THE SUPPLEMENTAL APPROPRIATIONS ACT OF 1953, BY
COMPTROLLER GENERAL DECISION NO. E 117341, NOVEMBER 6,
1953, THE THEORY BEING THAT NON-DOLLAR-BACKED POSITIONS
WERE NOT POSITIONS FOR THE USE AND SERVICE OF THE UNITED
STATES.

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INFO OCT-01 EUR-12 ISO-00 A-01 DRC-01 /018 W

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 0723

C O N F I D E N T I A L SECTION 02 OF 02 BONN 13441

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4. ASIDE FROM QUESTION OF STATE/DOD LIABILITY IN ANY UNFAVORABLE IRS RULING, THERE ARE POTENTIAL ADVERSE POLITICAL AND FINANCIAL IMPLICATIONS WITH THE GERMANS. IRS BONN ESTIMATES INCOME WITHHOLDING AND EMPLOYMENT TAX ARREARS TO BE SEVERAL MILLION DOLLARS, EVEN IF THE THREE YEAR STATUTE OF LIMITATIONS WERE APPLICABLE. SHOULD ARREARS BE REACHABLE BY IRS BACK TO THE BEGINNING OF THE OCCUPATION OF BERLIN, THE ASSESSMENT WOULD BE HUGE. EITHER WAY, THE IMPACT ON THE OCCUPATION COST BUDGET WOULD BE CONSIDERABLE. MOREOVER, A U.S. ATTEMPT TO PASS TO THE FRG THE RESPONSIBILITY INDIRECTLY TO PAY US INCOME WITHHOLDING AND EMPLOYMENT TAXES AND ARREARS (ALSO EMPLOYEE'S SHARE IF UNCOLLECTIBLE) IS LIKELY TO CREATE A POLITICAL PROBLEM. THIS WOULD BE PARTICULARLY SO IF THE FRG WERE INFORMED OF A FAIT ACCOMPLI WITHOUT ANY OPPORTUNITY ITSELF TO ENSURE THAT A BONA FIDE EFFORT HAD BEEN MADE TO PRESENT ALL THE EXPERT LEGAL ARGUMENTS THAT CAN BE MUSTERED AGAINST AN ADVERSE AND BINDING IRS DETERMINATION. IT IS ALSO POSSIBLE THAT DESPITE SUCH AN EFFORT, THE FRG WOULD REFUSE TO CONSIDER SUCH PAYMENTS A LEGITIMATE PART OF THE OCCUPATION BUDGET WHICH THE FRG MUST ASSUME; THAT MIGHT MEAN THAT THE DEPARTMENT OF STATE AND DOD WOULD BE LEFT WITH THE BILL.

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5. ACTION REQUESTED:

(A) SPECIFIC INSTRUCTIONS AS TO WHAT PERSONAL INFORMATION ON EMPLOYEES AND WHAT OFFICIAL FILES ARE TO BE SUPPLIED TO THE IRS ATTACHE IN RESPONSE TO HIS REQUEST IN PARA 2 ABOVE; AND

(B) THAT THE DEPARTMENT, PERHAPS WITH DOD INVOLVEMENT, EXAMINE HOW AND BY WHOM THE BEST TAX LAW AND OTHER ARGUMENTS CAN BE PREPARED AND PRESENTED TO IRS/TREASURY AGAINST AN ADVERSE IRS RULING IN THIS MATTER.
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